

ASSEMBLY BILL

No. 979

Introduced by Assembly Member Silva

February 18, 2011

An act to add Section 6377.5 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 979, as introduced, Silva. Sales and use taxes: exemption: manufacturing.

The Sales and Use Tax Law imposes a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state. That law provides various exemptions from those taxes.

The bill would exempt from those taxes, on and after January 1, 2012, the gross receipts from the sale of, and the storage, use, or other consumption of, qualified tangible personal property purchased by a qualified person for use primarily in the manufacturing process, as specified, and qualified tangible personal property purchased for use by a contractor for specified purposes, as provided.

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law, and existing law authorizes districts, as specified, to impose transactions and use taxes in conformity with the Transactions and Use Tax Law, which conforms to the Sales and Use Tax Law. Exemptions from state sales and use taxes are incorporated into these laws.

This bill would specify that this exemption does not apply to local sales and use taxes, transactions and use taxes, and specified state taxes from which revenues are deposited into the Local Public Safety Fund, the Local Revenue Fund, or the Fiscal Recovery Fund.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. It is the intent of the Legislature to enact a
2 competitive tax policy for manufacturers by providing for an
3 exemption from state sales and use taxes for the sale of, or the
4 storage, use, or other consumption of, manufacturing equipment
5 used in the manufacturing process.

6 SEC. 2. Section 6377.5 is added to the Revenue and Taxation
7 Code, to read:

8 6377.5. (a) On or after January 1, 2012, there are exempted
9 from the taxes imposed by this part the gross receipts from the sale
10 of, and the storage, use, or other consumption in this state of, any
11 of the following:

12 (1) Qualified tangible personal property purchased for use by
13 a qualified person to be used primarily in any stage of the
14 manufacturing, processing, refining, fabricating, or recycling of
15 property, beginning at the point raw materials are received by the
16 qualified person and introduced into the process and ending at the
17 point at which the manufacturing, processing, refining, fabricating,
18 or recycling has altered property to its completed form, including
19 packaging, if required.

20 (2) Qualified tangible personal property purchased for use by
21 a contractor purchasing that property for use in the performance
22 of a construction contract for the qualified person, who will use
23 the qualified tangible personal property as an integral part of the
24 manufacturing, processing, refining, fabricating, or recycling
25 process, or as a storage facility for use in connection with the
26 manufacturing process.

27 (b) For purposes of this section:

28 (1) "Fabricating" means to make, build, create, produce, or
29 assemble components or property to work in a new or different
30 manner.

(2) “Manufacturing” means the activity of converting or conditioning property by changing the form, composition, quality, or character of the property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail. Manufacturing includes improvements to qualified tangible personal property that result in a greater service life or greater functionality than that of the original property.

(3) “Primarily” means qualified tangible personal property used 50 percent or more of the time in an activity described in subdivision (a).

(4) “Process” means the period beginning at the point at which raw materials are received by the qualified person and introduced into the manufacturing, processing, refining, fabricating, or recycling activity of the qualified person and ending at the point at which the manufacturing, processing, refining, fabricating, or recycling activity of the qualified person has altered qualified tangible personal property to its completed form, including packaging, if required. Raw materials shall be considered to have been introduced into the process when the raw materials are stored on the same premises where the qualified person’s manufacturing, processing, refining, or recycling activity is conducted. Raw materials that are stored on premises other than where the qualified person’s manufacturing, processing, refining, fabricating, or recycling activity is conducted, shall not be considered to have been introduced into the manufacturing, processing, refining, fabricating, or recycling process.

(5) “Processing” means the physical application of the materials and labor necessary to modify or change the characteristics of property.

(6) “Qualified person” means any of the following:

(A) A person who is engaged in those lines of business described in Codes 3111 to 3399, inclusive, or 5112 of the North American Industry Classification System (NAICS) published by the United States Office of Management and Budget (OMB), 2007 edition.

(B) An affiliate of a person qualified pursuant to subparagraph (A) shall also be considered a qualified person as long as the affiliate is included as a member of that person’s unitary group for which a combined report is required to be filed under Article 1 (commencing with Section 25101) of Chapter 17.

1 (7) (A) “Qualified tangible personal property” includes, but is
2 not limited to, all of the following:

3 (i) Machinery and equipment, including component parts and
4 contrivances such as belts, shafts, moving parts, and operating
5 structures.

6 (ii) Equipment or devices used or required to operate, control,
7 regulate, or maintain the machinery and equipment, including, but
8 not limited to, computers, data-processing equipment, and computer
9 software, together with all repair and replacement parts with a
10 useful life of one or more years therefor, whether purchased
11 separately or in conjunction with a complete machine and
12 regardless of whether the machine or component parts are
13 assembled by the qualified person or another party.

14 (iii) Property used in pollution control that meets standards
15 established by this state or any local or regional governmental
16 agency within this state.

17 (iv) Special purpose buildings and foundations used as an
18 integral part of the manufacturing, processing, refining, or
19 fabricating process, or that constitute a research or storage facility
20 used during the manufacturing process. Buildings used solely for
21 warehousing purposes after completion of the manufacturing
22 process are not included.

23 (v) Fuels used or consumed in the manufacturing process.

24 (B) “Qualified tangible personal property” shall not include any
25 of the following:

26 (i) Consumables with a normal useful life of less than one year,
27 except as provided in clause (v) of subparagraph (A).

28 (ii) Furniture, inventory, and equipment used in the extraction
29 process, or equipment used to store finished products that have
30 completed the manufacturing process.

31 (iii) Tangible personal property used primarily in administration,
32 general management, or marketing.

33 (8) “Refining” means the process of converting a natural
34 resource to an intermediate or finished product.

35 (c) An exemption shall not be allowed under this section unless
36 the purchaser furnishes the retailer with an exemption certificate,
37 completed in accordance with any instructions or regulations as
38 the board may prescribe, and the retailer subsequently furnishes
39 the board with a copy of the exemption certificate. The exemption
40 certificate shall contain the sales price of the qualified tangible

1 personal property that the sale of, or the storage, use, or other
2 consumption of, is exempt pursuant to subdivision (a).

3 (d) (1) Notwithstanding any provision of the Bradley-Burns
4 Uniform Local Sales and Use Tax Law (Part 1.5 (commencing
5 with Section 7200)) or the Transactions and Use Tax Law (Part
6 1.6 (commencing with Section 7251)), the exemption established
7 by this section shall not apply with respect to any tax levied by a
8 county, city, or district pursuant to, or in accordance with, either
9 of those laws.

10 (2) Notwithstanding subdivision (a), the exemption established
11 by this section shall not apply with respect to any tax levied
12 pursuant to Section 6051.2, 6051.5, 6201.2, or 6201.5, or pursuant
13 to Section 35 of Article XIII of the California Constitution.

14 (e) Notwithstanding subdivision (a), the exemption provided
15 by this section shall not apply to any sale or use of property which,
16 within one year from the date of purchase, is removed from
17 California, converted from an exempt use under subdivision (a)
18 to some other use not qualifying for the exemption, or used in a
19 manner not qualifying for the exemption.

20 (f) If a purchaser certifies in writing to the seller that the property
21 purchased without payment of the tax will be used in a manner
22 entitling the seller to regard the gross receipts from the sale as
23 exempt from the sales tax, and within one year from the date of
24 purchase, the purchaser removes that property from California,
25 converts that property for use in a manner not qualifying for the
26 exemption, or uses that property in a manner not qualifying for
27 the exemption, the purchaser shall be liable for payment of sales
28 tax, with applicable interest, as if the purchaser were a retailer
29 making a retail sale of the property at the time the property is so
30 removed, converted, or used, and the sales price of the property
31 to the purchaser shall be deemed the gross receipts from that retail
32 sale.

33 (g) This section applies to leases of qualified tangible personal
34 property classified as “continuing sales” and “continuing
35 purchases” in accordance with Sections 6006.1 and 6010.1. The
36 exemption established by this section shall apply to the rentals
37 payable pursuant to such a lease, provided the lessee is a qualified
38 person and the property is used in an activity described in
39 subdivision (a). Rentals that meet the foregoing requirements are
40 eligible for the exemption for a period of six years from the date

1 of commencement of the lease. At the close of the six-year period
2 from the date of commencement of the lease, lease receipts are
3 subject to tax without exemption.

4 SEC. 3. This act provides for a tax levy within the meaning
5 of Article IV of the Constitution and shall go into immediate effect.

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